IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 1149 of 2005(C)

CRA.1174/2004 of SESSIONS COURT, ERNAKULAM
CC.123/2001 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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REVN. PETITIONER: APPELLANT/2ND ACCUSED:

A.M. SADHIQ,
PROPRIETOR, STAR TRADING CO., XL/4216,
STAR COTTAGE, ST. ALBERT'S SCHOOL ROAD, KOCHI-35.

BY ADV. SRI.T.O.XAVIER

RESPONDENTS: RESPONDENTS/COMPLAINANT:

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1. JAGADISH TRADING CO., WHOLESALE GRAIN &
EDIBLE OIL MERCHANTS & COMMISSION AGENTS,39/1532,
2ND FLOOR, SHIV ASHRAM, S.P. MUKHERJI MARG,DELHI,
REP. BY ITS POWER HOLDER DILIPKUMR AGARWAL,
S/O. JADADISH AGARWAL, RESIDING AT 12/1334,
PANAYAPPILLY, KOCHI.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.M. NAZAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/11/2007 ALONG WITH OTHER CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. Nos. 1149 of 2005, 1151/05, 1152 of 2005, 1244 of 2005, 1247 of 2005, 3513 of 2005, 3515 of 2005, 352 of 2006, 355 of 2006 & 357 of 2006

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Dated: 26-11-2007

O R D E R

In all these cases the common revision petitioner was the common 2nd accused in C.C.Nos. 123/01, 124/01, 125/01, 168/01, 167/01, 126/01, 128/01 129/01, 131/01 and 130 of 2001 respectively before the J.F.C.M .-II, Kochi in private complaints filed by the common first respondent herein under Sec. 138 of the negotiable Instruments Act, 1881 and involving Rs. 1,00,000/-, 1,00,000/-, 1,05,705/-, 1,00,000/-, 1,00,000/-, 1,05,705/-, 1,05,000/-, 1,00,000/- and 1,00,000/- respectively. The cheque amounts represented the balance sale price for the supply of wheat by the first respondent/complainant.

1. 2. The trial court convicted the revision petitioner and sentenced him to imprisonment for various periods in addition to compensation payable under Sec. 357 (3) Cr.P.C. On appeal preferred by the revision petitioner as Crl. Appeal Nos. 1174, 1173, 1172, 242 and 241 of 2004 and 197, 196, 595, 596 and 599 of 2005 respectively before the Sessions Court, Ernakulam, the lower appellate Court confirmed the conviction but modified the sentence. It is the modified judgments which are assailed in this revision.

3. I heard the learned counsel appearing for the revision petitioner as well as the learned counsel appearing for the first respondent/complainant.

4. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

5. The learned counsel appearing for the revision petitioner made the following further submissions before me:-

Ext.D1 is the fax message dated 2-11-2000 sent by the complainant intimating the accused about the dishonour of the cheques. In the absence of any mode of service of notice under Sec. 138 of the N.I. Act Ext.D1 has to be treated as the statutory notice and if so the complaints filed in all these cases were beyond the period of limitation prescribed under Sec. 138 of the N.I.Act.

6. The above contention was repelled by the courts below which held that in the absence of a demand of the cheque

amount in Ext.D1 fax message as contemplated by clause (b) of the proviso to Sec. 138 of the N.I.Act the same cannot be treated as a statutory notice and that the subsequent notice dated 19-12-200 by the complainant specifically demanding the cheque amount alone would constitute the statutory notice falling within the above provision and if so the complaints filed within 45 days of the receipt of the statutory notice by the accused were within time. I see no reason to differ from the view taken by the courts below. In the absence of a demand of the cheque amount in the fax message, the same cannot be treated as a statutory notice. If so, the subsequent notice issued on 19-12-2000 containing specific demand of the cheque amount alone can be treated as the statutory notice. There is no dispute that the if the subsequent notice dated 19-12-2007 is treated as the statutory notice, the complaints were filed in time. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the

case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. Accordingly, the sentence imposed on the revision petitioner is set aside and instead he is sentenced to undergo imprisonment till rising of court and to pay the cheque amount in each of these cases as fine which shall be deposited before the trial court within **six months** from today failing which he shall suffer simple imprisonment for ***three months.*** The fine amount as and deposited shall be paid to the first respondent complainant as compensation under Sec. 357 (1) Cr.P.C. The Magistrate shall give credit to the amounts, if any, already deposited, while insisting on the deposit of the aforementioned amounts as fine.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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